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Ontario

ENVIRONMENTAL ASSESSMENT BOARD

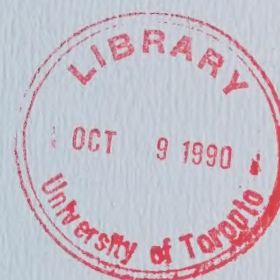
VOLUME: 237

DATE: Friday, September 21, 1990

BEFORE:

A. KOVEN Chairman

E. MARTEL Member



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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.


Hearing held at the offices of the Ontario
Highway Transport Commission, Britannica
Building, 151 Bloor Street West, 10th Floor,
Toronto, Ontario, on Friday, September 21st,
1990, commencing at 8:30 a.m.

VOLUME 237

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member



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A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	
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MR. B. CAMPBELL)	
MS. J. SEABORN)	MINISTRY OF ENVIRONMENT
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MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. H. TURKSTRA	ENVIRONMENTAL ASSESSMENT BOARD
MR. E. HANNA)	ONTARIO FEDERATION OF
DR. T. QUINNEY)	ANGLERS & HUNTERS
MR. D. HUNTER)	NISHNAWBE-ASKI NATION
MS. N. KLEER)	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
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MR. Y. GERVAIS)	ONTARIO TRAPPERS
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MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION

APPEARANCES: (Cont'd)

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MS. B. LLOYD)	
MR. J.W. ERICKSON, Q.C.)		RED LAKE-EAR FALLS JOINT
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MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH)	
MR. J. EBBS		ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
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MR. P. ODORIZZI		BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY

APPEARANCES: (Cont'd)

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MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

Page No.

SCOPING SESSION

43031-43044

1 ---Upon commencing at 8:35 a.m.

2 MADAM CHAIR: Please be seated.

3 MS. SWENARCHUK: Good morning.

4 MADAM CHAIR: Good morning.

5 Before we get started with Forests for
6 Tomorrow's Panels 1 and 1A, I think that Mr. Pascoe has
7 informed all the parties of OFIA/OLMA's request for an
8 extension of the September 28th deadline for the terms
9 and conditions and some other parties have gotten in
10 touch with us as well.

11 The Board is going to agree to the
12 extension of the deadline for all parties. It is our
13 view that this is an important exercise. If an
14 extension will give parties a chance to spend more time
15 putting more detail into their terms and conditions or
16 discussing them among each other, then the Board thinks
17 that that might be productive. So all parties will
18 have an extension until November the 28th.

19 MR. CASSIDY: Madam Chair, if I could
20 just make one note for the record - and I want to
21 apologize in advance for any confusion I may have
22 caused in my submissions to Mr. Pascoe or the Board
23 when we were in Hearst - it was my intention, and I am
24 going to have to go back and check my wording in the
25 transcript, to ask for that extension across the board

1 for all parties, rather than suggesting that it was
2 just for myself.

3 I never try to seek an unfair advantage
4 for my client, and under the circumstances I just want
5 to make it clear on the record that my request for an
6 extension was for all the parties, and I guess I could
7 speak on behalf of all parties and thank you for
8 granting that extension.

9 MADAM CHAIR: Well, again, we think it's
10 an important exercise and if that extension will go
11 some way towards improving the quality of everyone's
12 terms and conditions, then that's all right with the
13 Board.

14 MS. SEABORN: Madam Chair, if I could
15 just make one brief comment on this issue. Based on
16 the memorandum that came around to all parties
17 yesterday with respect to OFIA's request for an
18 extension, the instructions from my client are, we are
19 not to oppose that request; however, to let the Board
20 know that we are ready to file our terms and
21 conditions. My instructions as of today are to file
22 them on September 28th.

23 Based on a general extension to all
24 parties, I will go back to my client and ask them
25 whether or not they want to have more time. At this

1 point in time, I can tell you that we do intend to file
2 next Friday.

3 MADAM CHAIR: Well, we certainly don't
4 want to prevent parties who are ready to do that, but
5 the idea behind granting this request is that in some
6 way it would improve the exercise.

7 MS. SEABORN: I understand that.

8 MADAM CHAIR: The parties would have
9 fuller information and would be able to do more work
10 with respect to finalizing the terms and conditions.

11 MS. SEABORN: Thank you.

12 MADAM CHAIR: I think the only other
13 matter has to do with sitting on Monday, October the
14 1st. We are not going to be sitting the whole day on
15 Monday, October the 1st and we won't know until next
16 week exactly which hours we are sitting, but we will
17 send a fax out to the full-time parties the minute we
18 know what those hours will be.

19 MR. HUFF: Is there any tentative time?
20 It is the first day of our hearing and we have a lot of
21 people that want to see our opening address and we have
22 to inform them.

23 MADAM CHAIR: No, we don't know if it is
24 going to be a matter of taking a bit of time out of the
25 morning or the afternoon, but certainly the Board will

1 sit later on Monday if that will accommodate some of
2 your witnesses. It looks like the morning to us right
3 now.

4 MS. SWENARCHUK: That is, it looks like
5 we will be sitting in the morning?

6 MADAM CHAIR: It looks like we won't be
7 sitting in the morning. We would originally start at
8 ten o'clock. It looks to us as though we wouldn't
9 start until the afternoon, after the lunch break and
10 then we would sit later.

11 We have planned on sitting until five,
12 but certainly if -- your schedule is getting fractured
13 here a bit and so if you have a suggestion to us about
14 what time you would like to us to sit Monday night,
15 then we are open to that.

16 MS. SWENARCHUK: We will wait for the
17 Board's fax.

18 MADAM CHAIR: Thank you.

19 We haven't had a scoping session for a
20 long time, I forget how we proceed with these things.

21 Ms. Swenarchuk, do you want me to go
22 around and ask each of the parties or would you like
23 each of the parties to clarify what they have said in
24 their statements?

25 MS. SWENARCHUK: I have no questions for

1 the other parties, aside from perhaps Mr. Hanna who
2 didn't specify any areas of cross-examination.
3 ---Discussion off the record.

4 MADAM CHAIR: Did you have a question of
5 clarification for Mr. Hanna?

6 MS. SWENARCHUK: If Mr. Hanna is able now
7 to provide more details on areas that he is going to
8 cross-examine, because it is identified just as
9 paragraphs 2 to 8, that would be helpful.

10 I have no other questions. I was looking
11 forward to hearing whether the Board has specific areas
12 that it wants to hear from us.

13 MADAM CHAIR: Mr. Hanna, did you have
14 anything to add to your statement of issues?

15 MR. HANNA: Madam Chair, I'm in the
16 difficult position of not being able to answer and the
17 reason I am not able to answer is, we had submitted
18 fairly extensive interrogatories on Panel 1, hoping as
19 as much as possible to deal with the issues that could
20 be dealt with outside the hearing room as possible, to
21 use this time as efficiently as possible.

22 Unfortunately, I haven't received and I
23 hadn't received at the time that my statement of issues
24 were submitted to the Board interrogatory responses.

25 I have laid out in our interrogatories I

1 think fairly comprehensively the types of issues that I
2 would like to pursue with this panel, but until I see
3 thoses responses I can't direct the Board or provide
4 the Board with any further insight as to what areas I
5 will pursue and what areas I wouldn't pursue.

6 I could, and I actually considered it in
7 my statement of issues, to basically do a precis of our
8 interrogatories, but I didn't really feel that was
9 useful.

10 MS. SWENARCHUK: The interrogatories will
11 be available Monday, I expect. That's fine, I
12 understand the issues...

13 MADAM CHAIR: All right. Fine.

14 The Board had two comments to make on
15 issues that we would like Dr. Hutchinson to make clear
16 in his evidence. The first has to do with what we have
17 heard from the Ministry of Natural Resources.

18 Their evidence so far with respect to
19 clearcutting and the nutritional status and hydrology
20 of a site appears to be that there are certainly
21 short-term negative impacts, but over the long term the
22 clearcut areas are resilient and recover to some
23 extent, if not entirely on some sites.

24 Dr. Hutchinson's evidence suggests that
25 nutrition depletions are a very serious concern, that

1 inevitably cause restrictions on the second growth or
2 further generation of forests, and the Board would like
3 Dr. Hutchinson to concentrate on what those long-term
4 effects are. Certainly he addressess it throughout his
5 witness statements, but we would like to have his
6 discussion of that in one part of the evidence where we
7 can look at what he sees to be the long-term effects of
8 clearcutting and where he sees that there really aren't
9 reversible improvements in a site.

10 The second point we would like Dr.
11 Hutchinson to talk about in his evidence is, he touches
12 on the problem of global warming and we want to know in
13 his opinion whether he thinks that the potential
14 effects of this phenomenon or this event is something
15 that can be dealt with in timber management planning
16 today or can it be addressed in a timber management
17 planning process.

18 How long do you expect Dr. Hutchinson to
19 be giving his evidence?

20 MS. SWENARCHUK: Not for more than two
21 days.

22 MADAM CHAIR: All right. So if we don't
23 finish that week of the 1st, then he would finish very
24 quickly the following Monday.

25 MS. SWENARCHUK: I expect so.

1 MADAM CHAIR: Do we have an idea of how
2 long the parties will be in cross-examination?

3 Mr. Freidin?

4 MR. FREIDIN: Two days.

5 MADAM CHAIR: Mr. Hanna?

6 MR. HANNA: Madam Chair, I hate to resort
7 to the same line, but unfortunately that's the case I
8 am faced with.

9 As I say, I had attempted through the
10 interrogatories to try and deal as much as possible
11 with matters that could be dealt with outside the
12 hearing room. Seeing I haven't got those responses, I
13 really can't assess that for the Board. If we receive
14 responsive and comprehensive answers to the
15 interrogatories, I don't imagine it would be more than
16 half a day, but it's strictly speculation at this
17 point.

18 MADAM CHAIR: Thank you, Mr. Hanna.

19 Ms. Seaborn?

20 MS. SEABORN: Two to three hours, Madam
21 Chair.

22 MADAM CHAIR: Mr. Cassidy?

23 MR. CASSIDY: One to two days.

24 MADAM CHAIR: We have haven't heard from
25 any of the other parties. Do you have any information,

1 Ms. Swenarchuk, that would suggest there will be any
2 other cross-examination on this panel?

3 MS. SWENARCHUK: I have heard nothing
4 from any other parties.

5 MADAM CHAIR: All right. Then we will
6 assume that's it for the parties who will
7 cross-examine.

8 Has everyone received a copy of the
9 Board's schedule through December?

10 MR. CASSIDY: You are referring to the
11 revised schedule?

12 MADAM CHAIR: The revised schedule, yes.

13 MR. CASSIDY: Yes, thank you.

14 MADAM CHAIR: All right. Well, I don't
15 think we have any other business today then.

16 Mr. Freidin?

17 MR. FREIDIN: There is one matter I would
18 like to raise. You will recall there was some
19 discussion before we started the satellite hearings,
20 again regarding the witness statement from
21 Beardmore/Nipigon Watchdog Society, and the question as
22 to whether or not interrogatories should be answered if
23 posed.

24 I think the Board has received a copy of
25 Ms. Murphy's letter to Forests for Tomorrow dated

1- September the 19th, 1990 with enclosure, the enclosure
2 being interrogatories which the Ministry has imposed in
3 relation to that witness statement.

4 You will recall, Madam Chair, that the
5 concern raised some weeks ago was that without having
6 seen that witness statement it was difficult to
7 indicate, to know what the subject of it would be, but
8 it is the view of the Ministry that Mr. Marek is being
9 put forward as an expert witness. No question that he
10 is opining on matters which only an expert could
11 provide evidence on in terms of silviculture.

12 It is clear that it is an extension
13 really of Panel 3. It deals with some of the similar
14 matters, but goes on and expands on some of them and in
15 my opinion, having regard to the evidence being of that
16 nature and having it being so closely connected to
17 Panel 3, that it would justify an order that
18 interrogatories be answered.

19 Secondly, a lot of the questions which
20 have been posed are factual in nature and I think those
21 questions should be answered for the simple reason that
22 it would expedite the cross-examination. If we could
23 get the answers to those questions and the questions
24 which Mr. Marek would have to answer as an expert, it
25 is going to save some time when it comes to

1 cross-examination, but I don't know what he is going to
2 say if he doesn't deal with those answers.

3 I know a concern was raised by Forests
4 for Tomorrow the last day about the cost of
5 distribution. I understood the Board had graciously
6 offered to arrange for that distribution if Forests for
7 Tomorrow would make the answers available to the Board.

8 Under the circumstances, Madam Chair, I
9 think it would be appropriate that the questions posed
10 by the Ministry and other questions which may be posed
11 by other parties be responded to in a timely fashion in
12 relation to the statement of the Beardmore/Nipigon
13 Watchdog Society.

14 MADAM CHAIR: Do the other parties plan
15 on submitting interrogatories with respect to the
16 Beardmore submission -- the Beardmore witness
17 statement?

18 MR. CASSIDY: Madam Chair, I can't give
19 you a hundred per cent guarantee of that, but it is my
20 understanding that my clients will be submitting
21 interrogatories. There are meetings going on virtually
22 as we speak with respect to that and I understand the
23 intention is that interrogatories are required from my
24 client's perspective.

25 MADAM CHAIR: Ms. Seaborn?

1 MS. SEABORN: I believe, Madam Chair,
2 that we have four or five interrogatories in relation
3 to this witness statement. They have not gone out yet,
4 but they have been prepared.

5 MADAM CHAIR: Mr. Hanna?

6 MR. HANNA: Madam Chair, I'm not in a
7 position to respond specifically to that at this time.

8 I would, however, say that from my point
9 of view, and certainly it is something that I will
10 commit to this Board when we are presenting this
11 evidence, I would support the Board encouraging as much
12 factual exchange of information outside of the hearing
13 as possible to expedite the process. I am certainly
14 willing to cooperate in that respect.

15 What I am hearing Mr. Freidin saying is
16 that questions should be asked either through
17 interrogatory or in this room and I would like to look
18 through the witness statement. If there are factual
19 questions that I would have to ask in this room, I
20 think it is much better to ask it through an
21 interrogatory. I can't say for sure whether there are
22 questions that I would want to pose.

23 MADAM CHAIR: Ms. Swenarchuk?

24 MS. SWENARCHUK: Madam Chair, I would
25 just like to once again reiterate that this witness

1 statement is not the witness statement of Forests for
2 Tomorrow and it is not matter of Forests for Tomorrow
3 agreeing or not agreeing to respond to interrogatories.

4 To be quite blunt, Forests for Tomorrow
5 has nothing do with this witness statement. My client
6 is the Beardmore/Lake Nipigon Watchdog Society. I have
7 no instructions from that society to agree to the
8 answering of interrogatories. Of course, the society
9 will comply with whatever Board order should be made.

10 I can only repeat my concerns expressed
11 to you in the past which is that this is a very small
12 community group without the resources to, in my
13 estimation and I have discussed this with them, enter
14 into this type of expense.

15 I appreciate the Board's offer to
16 distribute the interrogatories. Of course, the society
17 is still faced with the cost of paying the consultant
18 to have them answered and, therefore, our position on
19 this cannot change.

20 MADAM CHAIR: Well, the Board isn't going
21 to make a decision about this right now. We haven't
22 seen Ms. Murphy's letter of September 19th. We were in
23 Hearst, as you recall. The letter is in our office and
24 we will be taking at look at it.

25 - We have two issues we want to look at.

1 The first is, to what extent there is overlap between
2 Panel 3 and the statement by the Beardmore Society.
3 What's the point of putting questions, interrogatories
4 to the Beardmore witness statement if some of that
5 information can be answered in Panel 3.

6 Secondly, the Board does have -- the
7 Board is very sympathetic to small parties that try to
8 appear before us and we are not happy that this process
9 is particularly accommodating to small parties and it
10 is the Board's intention to make it as accessible as
11 possible. So we are going to take account of that in
12 our decision and we will let the parties know next
13 week.

14 MS. SWENARCHUK: If I could only add that
15 it would be my view, having seen the questions
16 submitted by the Ministry, that it would take a
17 substantial amount of time for the consultant to
18 respond to them.

19 I am not suggesting there is anything
20 improper about that, but that's part I think of the
21 cost concern for the group as well. I don't know
22 whether that would also be the case with other
23 interrogatories from other parties.

24 MR. FREIDIN: I will just point out,
25 Madam Chair, that the consultant is Mr. Marek.

1 MADAM CHAIR: Yes.

2 MR. FREIDIN: It's not as if they are
3 going to have to hire somebody to answer his questions.

4 MS. SWENARCHUK: Excuse me.

5 MADAM CHAIR: No, I think the question is
6 they have to pay him, not hire him.

7 MS. SWENARCHUK: Absolutely. This is not
8 on a volunteer basis.

9 MADAM CHAIR: It would be helpful to the
10 Board when its making this decision if the other
11 parties could give us some idea about what their
12 interrogatories will be, if you could -- not
13 necessarily have word for word what your questions will
14 be, but if you could get something to us by next
15 Tuesday to show us the sorts of questions that you
16 would want to ask by way of interrogatory to Mr. Marek
17 that would help our decision.

18 Is there anything else?

19 MS. SWENARCHUK: We were about to deliver
20 a letter to the Board and I will simply tell you all
21 about it now. It has to do with the scheduling for
22 Panel 2 of our case, and we simply wish to advise the
23 Board and other parties, as the letter indicates, that
24 we will be calling these witnesses individually rather
25 than as a panel and that two of the witnesses will not

1 appear in the immediate sequence of the previous ones,
2 but will be called later because of scheduling issues.

3 MADAM CHAIR: And the other parties don't
4 object to this?

5 MR. HANNA: Madam Chair, this is on a
6 point that I have to rise on. Ms. Swenarchuk has
7 repeatedly done this and I have to bring it to the
8 Board's attention, I wish I didn't. In her letter she
9 says:

10 "We have spoken to other counsel about
11 this matter..."

12 The Board is well aware I am not counsel,
13 the Board knows that I am here representing a party.
14 This is the fourth time I have not been consulted on
15 matters such as this.

16 I believe that the Board should direct
17 Ms. Swenarchuk to ensure that the Ontario Federation of
18 Anglers & Hunters is consulted before these sort of
19 matters are brought forward.

20 MADAM CHAIR: Ms. Swenarchuk, do you have
21 any -- is there some problem in discussing these
22 matters with Mr. Hanna as you do with the other
23 counsel?

24 MS. SWENARCHUK: There is no problem at
25 all. Mr. Hanna might note that I haven't signed this

1 letter, I am not the author of this letter.

2 May I simply say that undoubtedly many
3 parties or various parties to this proceeding at
4 various times would wish for more communication than
5 they receive from various other parties. We don't all
6 find it necessary to bring that before the Board.

7 MR. CASSIDY: Madam Chair, I would just
8 like to make one comment with respect to this proposal.

9 We received a phone call late yesterday
10 from Mr. Lindgren in respect of it. I am not in a
11 position at this moment to take a position on it
12 because I would like to have an opportunity to speak to
13 Mr. Cosman who is going to be conducting part of the
14 cross-examinations in this witness statement. As I
15 think you may be aware, he is not in this country at
16 the moment, but will be back early next week.

17 If there is a problem, I will certainly
18 communicate that to Ms. Swenarchuk and the Board as
19 soon as possible upon speaking to Mr. Cosman, but I
20 will make that known at the earliest possible
21 opportunity so as not to inconvenience anyone.

22 MADAM CHAIR: Mr. Freidin?

23 MR. FREIDIN: I just have one brief
24 question. Are you able to -- do you know whether you
25 are going to call the other witnesses in the order

1 their witness statements appear, Michelle?

2 MS. SWENARCHUK: I don't know that, but
3 you are free to call Rick.

4 MR. FREIDIN: Oh, Mr. Lindgren.

5 MADAM CHAIR: Is that everything?

6 Thank you very much. We will see you in
7 Geraldton next week or here on Monday, October the 1st.

8
9 ---Whereupon the hearing was adjourned at 9:00 a.m., to
10 be reconvened in Geraldton, Ontario, Tuesday,
September 25, 1990 commencing at 2:00 p.m.

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